

**TESTIMONY OF PETER G. ANGELOS**  
**Before the House Committee on Government Reform**  
**U.S. House of Representatives**  
**April 7, 2006**

Thank you for inviting me here to testify. The issue you are addressing today – Comcast’s refusal to distribute over its cable system productions of Washington Nationals games – is of great interest to baseball fans in this region who support both the Washington Nationals and the Baltimore Orioles. As President of Baltimore Orioles Inc., I am here to encourage you to do all that you can to facilitate the distribution of Washington Nationals games over pay television systems. I know it may seem paradoxical to you that the owner of the Orioles would want to help the Nationals get on television, but through a creative and far-sighted arrangement reached just over a year ago, Major League Baseball has developed a means through which both the Orioles and the Nationals have the best possible chance of thriving in this market. From that arrangement, which I will describe, the Orioles and Nationals prosper when both teams together succeed.

Before doing so, however, I need to give you a little legal background, and this is important only because Comcast has filed a meritless lawsuit against the Orioles, Major League Baseball, and the regional sports network that now televises Nationals games and a certain number of Orioles games (those shown on the over-the-air broadcasts). The Baltimore Orioles Inc. is the general partner in a legal

entity known as TCR Sports Broadcasting Holding, L.L.P., which in turn does business under the trade name, Mid Atlantic Sports Network, or MASN. I give you that background from the outset because I will be using MASN as a short hand for the regional sports network that produces and exhibits the Washington Nationals games. We have been trying to brand the Mid-Atlantic Sports Network name so that fans know where to look on their television schedule to find the games. But the legal entity that branded the MASN name is TCR. TCR is the regional sports network that we formed in 1996 to hold the production rights to televise Baltimore Orioles games and that was the contracting party when Major League Baseball transferred the rights to produce and exhibit Nationals games. I will refer to this regional sports network, however, as "MASN," because that is how it is known to the public.

Prior to Major League Baseball assigning the production rights to Nationals games to TCR/MASN, Comcast negotiated vigorously to obtain those production rights for itself. So there can be no doubt that Comcast views the televising of Nationals games as very attractive and profitable programming. But, for more than a year now, Comcast has refused to carry MASN's programming of Nationals games. It has sent letters to all of the cable and satellite distributors threatening them with lawsuits if they defied Comcast and carried the Nationals games. Comcast has sent letters to members of Congress falsely blaming me, the Orioles,

and Major League Baseball for being responsible for the majority of pay television subscribers in the Washington area not being able to watch the Nationals games. And Comcast's affiliated regional sports network, Comcast SportsNet, has filed a meritless lawsuit against the Orioles, Major League Baseball, and TCR for breach of contract – a lawsuit that has twice been dismissed in the state trial court where Comcast chose to file suit.

All of those actions were designed either to use Comcast's monopoly power to try to put MASN out of business or to weaken MASN so much that we had no choice but to give up an ownership interest to Comcast as a condition for getting distribution. In short, Comcast wants the rights to televise Nationals games for its own regional sports network, and it has used the most aggressive possible tactics to achieve that objective. Now it is holding Nationals fans hostage as a way to weaken MASN.

Comcast has never told us that the price for this programming is too high. Indeed, we have reached carriage agreements from DirecTV, Cox, Verizon FIOS, RCN, and Charter Communications, and we have offered Comcast the same reasonable terms that these other distributors have accepted. Those agreements will enable approximately 2 million pay television subscribers to see Nationals games. But Comcast will not even talk to us about distributing these games to the fans even though Comcast is the dominant cable television distributor in

Washington, D.C., and the immediately surrounding areas. We have now made five formal written offers to Comcast to carry MASN – including one this week. Comcast has not even dignified our communications with a response. Let me be clear: We have repeatedly offered the same terms to Comcast that smaller distributors have accepted. Comcast simply refuses to deal with us.

Comcast's actions are in direct violation of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 536. That Act provides that the FCC "shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors." 47 U.S.C. § 536. In particular, Congress provided that the regulations shall:

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

47 U.S.C. § 536(a)(3). In 1993, pursuant to Congress's instructions, the Commission adopted rules to implement that provision. The relevant regulation is now codified at 47 C.F.R. § 76.1301(c), which states: "No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to

compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”

There is no reasonable doubt that, if Comcast had obtained the rights to produce and exhibit Nationals games for Comcast SportsNet, those games would be available to Comcast subscribers. Indeed, only recently a two-team regional sports network or “RSN” was formed in Chicago, in which Comcast owns an equity position. That RSN easily obtained carriage from Comcast, but that RSN then doubled the rate charged to other competing satellite distributors such as DirecTV. It is thus clear that Comcast’s actions are in direct violation of the Cable Act and FCC regulations prohibiting discrimination on the basis of non-affiliation. Although we believe a clear remedy is available to us with the FCC, the Commission has thus far taken no action on a complaint that we filed on June 14, 2005. We urge you to communicate with the FCC to encourage the Commission to take prompt action in resolving our complaint.

Comcast’s actions and its proclivity to discriminate in ways that harm unaffiliated programmers and other competing video distributors make it especially inappropriate that Comcast should expand its monopoly. Yet that is precisely what Comcast seeks to do in purchasing the assets of Adelphia, the nation’s third largest cable operator, in conjunction with Time Warner. That acquisition would increase

Comcast's monopoly position in paid television in the Washington, D.C. region to the point where Comcast would have the same incentives and ability to discriminate as in other markets where it has control over marquee programming and a dominant position in distribution. In Philadelphia, for example, Comcast's regional sports network controls the Phillies, the Flyers, and the 76ers. Yet Comcast does not permit any rival distributor to carry that programming. Consequently, satellite penetration in Philadelphia is approximately half the national average, and cable prices have been increasing in Philadelphia at a faster rate than elsewhere in the country. Comcast should not be permitted to use its dominant position in distribution in the Washington market to bleed MASN into bankruptcy. As it did in Philadelphia, Comcast would then scoop up MASN's valuable programming assets for Comcast SportsNet and restrict other carriers from obtaining that access. We have urged the FCC not to allow Comcast to increase its monopoly position by acquiring the assets of Adelphia without substantial conditions that would protect unaffiliated regional sports networks and rival distributors. We urge you to make your views known to the Commission that Comcast's tactics are wrong and hurt consumers.

We did not seek to have conflict with Comcast. Our aim has simply been to run our business and to obtain a distribution agreement with Comcast. But the

Cable Act prohibits Comcast from insisting on control over programming or an ownership interest in a programming network as a condition of obtaining carriage.

I would like to explain how we got to this situation and why we believe that Comcast is engaging in anti-competitive actions that only harm baseball fans in this region. Quite simply, Comcast is trying as hard as it can to protect its monopoly on regional sports programming through its affiliated regional sports network, Comcast SportsNet. MASN is a competitor to Comcast SportsNet, and Comcast negotiated vigorously to obtain the production rights to Nationals games for itself. Comcast's refusal to deal with MASN reflects Comcast's unhappiness that MLB awarded these rights to TCR/MASN, and not to Comcast SportsNet. It also reflects an abuse of its market power to weaken a rival regional sports network that has the audacity to maintain its independence from Comcast. I submit to you that those are not good reasons to deny the fans of this area the opportunity to see their team on television.

In fact, at this point, it is not relevant why Major League Baseball entered into a contract with us to award the Nationals' television rights to TCR/MASN. What is relevant is that Comcast should do the right thing now and carry the games.

Nonetheless, I do want to explain why Comcast is simply wrong to assert that it offered a better deal for Comcast SportsNet to produce the Nationals games,

because that explanation will make it even clearer why Comcast is abusing its monopoly power. First, under a longstanding arrangement, each Major League team controls the pay television rights within a specified territory. In the Orioles' case, that territory encompasses the States of Maryland, Virginia, and Delaware, the District of Columbia, and parts of Pennsylvania, West Virginia, and North Carolina. The relocation of the Expos into the Orioles' television territory without any corresponding change in MLB's rules meant that the Orioles controlled the pay television rights for that team. When my ownership group paid a record \$173 million to purchase the Orioles in 1993, we recognized that this television territory was a very valuable asset of the franchise. In the intervening years since we bought the Orioles, it increasingly has become the trend for sports teams to form their own regional sports networks. Chicago has a regional sports network with both the Cubs and the White Sox as owners, and New York has four regional sports networks. Our aim was to find a way to do what other teams were doing.

A second reason this contract made sense for the Nationals was it made Major League Baseball, through a legal entity it has created, a part owner of the network. We have all assumed that, once the new owners of the Nationals are selected, MLB will have the option of selling its interest in TCR/MASN to the team's new owners. If that happens, the Nationals will have the best of all possible worlds – a guaranteed rights fee payment that places the Nationals in the top ten of



all major league teams, according to the Washington Post, plus a percentage of the profits of the network. Comcast offered only a rights fee to televise Nationals games, and not a percentage of the profits in its RSN, Comcast SportsNet. Consequently, the profit sharing component of this contract is potentially very lucrative for the Nationals.

Third, even the rights fee aspect of this contract is better for MLB, the Nationals, and the Orioles than what Comcast has offered. Last year, we paid the Nationals \$20 million to televise their games, which is more than Comcast SportsNet paid us to televise Orioles games. The agreement provides a mechanism to revalue the rights fees at a market-based rate through an MLB committee in the event TCR/MASN and the Nationals are not able to agree on a new contract. The benefits of that arrangement to both the Nationals and Orioles cannot be overstated. It guarantees each team a market rate as evaluated and set by a neutral third party determined by Major League Baseball.

I want to close by stressing that we are doing all we can to make the Nationals games available for all the fans in this region. We have worked tirelessly to produce and exhibit those games and to reach out to distributors to carry those games. Comcast has the power to make these games available to more than 1 million subscribers with just the flick of a switch. We have made good-faith offers to Comcast to carry our programming and we stand ready to consider any

reasonable counterproposals it offers. But it is completely intolerable for Comcast to abuse its monopoly power by refusing to carry programming that baseball fans throughout the region want to see.

Thank you, Mr. Chairman.